

1645  
AF

Practitioner's Docket No. U 011415-0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John Walker, et al  
Serial No.: 08/913,430      Group No.: 1645  
Filed: December 9, 1997      Examiner.: Rodney P. Swartz  
For: ANTIGEN COMPOSITION AGAINST MYCOPLASMA

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**RESPONSE UNDER  
37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP  
1645**

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**AMENDMENT OR RESPONSE AFTER FINAL REJECTION—TRANSMITTAL**

**CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10\***

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37 C.F.R. 1.8(a)

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Date: August 12, 2003

Signature

**CLIFFORD J. MASS**

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"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

1. Transmitted herewith is an amendment after final rejection (37 C.F.R. 1.116) for this application.

NOTE: *Response to Final Rejection—Avoiding Extension Fees* "In patent applications wherein a three month Shortened Statutory Period (SSP) is set for response to a Final Rejection, the response would best be filed within two months of the date of the Office Action. If filed within two months, any Advisory Action mailed after the SSP expires will reset the SSP to expire on the date of the Advisory Action for extension fee purposes, but never more than six months from the date of the Final Rejection." Notice of Nov. 30, 1990 (1122 O.G. 571 to 591).

STATUS

2. Applicant is

- ☐ a small entity. A statement:
- ☐ is attached.
- ☐ was already filed.
- ☒ other than a small entity.

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EXTENSION OF TERM

NOTE: *As to a Supplemental Amendment filed in response to a final office action, the Notice of December 10, 1985 (1061 O.G. 34-35) states:*

*"If a timely response has been filed after a Final Office Action, an extension of time is required to permit filing and/or entry of a Notice of Appeal or filing and/or entry of an additional amendment after expiration of the shortened statutory period unless the timely-filed response placed the application in condition for allowance. Of course, if a Notice of Appeal has been filed within the shortened statutory period, the period has ceased to run."*

3. (complete (a) or (b), as applicable)

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. 1.136 (fees: 37 C.F.R. 1.17(a)(1)-(4)) for the total number of months checked below:

	Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/>	one month	\$ 110.00	\$ 55.00
<input type="checkbox"/>	two months	\$ 410.00	\$ 205.00
<input type="checkbox"/>	three months	\$ 930.00	\$ 465.00
<input type="checkbox"/>	four months	\$ 1,450.00	\$ 725.00

Fee: \$ \_\_\_\_\_

If additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for \_\_\_\_\_ months has already been secured and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

OR

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

### FEE FOR CLAIMS

4. The fee for claims (37 C.F.R. 1.16(b)-(d)) has been calculated as shown below:

(Col.1)		(Col. 2)	(Col. 3)	SMALL ENTITY		OTHER THAN A SMALL ENTITY			
Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Addit. Fee	OR	Rate	Addit. Fee	
Total	* Minus	**	=	x \$ 9 =	\$		x \$ 18 =	\$	
Indep.	* Minus	***	=	x \$ 42 =	\$		x \$ 84 =	\$	
<input type="checkbox"/> First Presentation of Multiple Dependent Claim				+ \$ 140 =	\$		+ \$ 280 =	\$	
					Total Addit. Fee	\$	OR	Total Addit. Fee	\$

- \* If the entry in Col. 1 is less than the entry in Col. 2, write "O" in Col. 3.  
 \*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".  
 \*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".  
 The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING:** See 37 C.F.R. § 1.116.

(complete (c) or (d), as applicable)

- (c) ☒ No additional fee is required.

**OR**

- (d) ☐ Total additional fee required is \$ \_\_\_\_\_.

### FEE PAYMENT

5. ☐ Attached is a check in the sum of \$ \_\_\_\_\_.  
☐ Charge Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_.  
 A duplicate of this transmittal is attached.

## FEE DEFICIENCY

**NOTE:** *Where there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the case. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, (1065 O.G. 31-33).*

6. ☒ If any additional extension and/or fee is required, charge Account No. 12-0425

AND/OR

- ☒ If any additional fee for claims is required, charge Account No. 12-0425

Reg. No.: 30,086

Tel. No.: (212) 708-1890

Customer No.: 00140

  
\_\_\_\_\_  
SIGNATURE OF PRACTITIONER

CLIFFORD J. MASS  
(type or print name of practitioner)

\_\_\_\_\_  
P.O. Address

\_\_\_\_\_  
c/o Ladas & Parry  
26 West 61<sup>st</sup> Street  
New York, N.Y. 10023

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PATENT

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In re application of: John Walker, et al  
Serial No.: 08/913,430 Group No.: 1645  
Filed: December 9, 1997 Examiner.: Rodney P. Swartz  
For: ANTIGEN COMPOSITION AGAINST MYCOPLASMA

Attorney Docket No.: U 011415-0

Commissioner for Patents  
Washington, D.C. 20231

# 32  
RM  
8/31/03

REQUEST TO VACATE ACTION

This is in response to the Official Action mailed March 12, 2003, wherein the Examiner has finally rejected the claims of this continued prosecution application

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CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10\*  
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Signature

CLIFFORD J. MASS

(type or print name of person certifying)

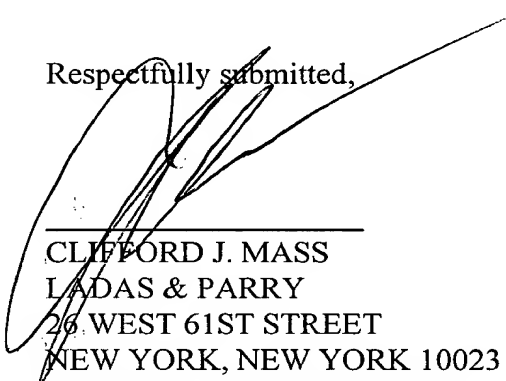
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08/913,430 of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

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01 FC:1252 410.00 DA

over art cited in the parent application. However, Applicants respectfully note that the Office Action and the final rejection are premature insofar as Applicants filed this continued prosecution application without payment of the filing fee. As provided in MPEP Section 201.06(d), "a CPA **will not** be placed upon the files for examination until all of its required parts, including the filing fee and surcharge, if necessary, are received" (emphasis added).

Since Applicants did not pay the filing fee of this CPA, the application should not have been placed upon the files for examination. A notice to file missing parts should have issued rather than a final rejection. Under these circumstances, it is respectfully submitted that the Official Action should be vacated and a notice to file missing parts should issue giving Applicants a specified period of time for payment of the filing fee.

Respectfully submitted,



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